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**Comptroller General  
of the United States**

Washington, D.C. 20548

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## Decision

**Matter of:** RSI Realty Services, Inc.

**File:** B-262238

**Date:** December 12, 1995

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Robert W. Howells for the protester.

Arnette L. Georges, Esq., for the Department of Housing and Urban Development, for the agency.

John L. Formica, Esq., and James A. Spangenberg, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

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### DIGEST

Agency's waiver of definitive responsibility criterion, set forth in solicitation for real estate acquisition management services to require that offerors possess a valid real estate brokers license prior to award, is unobjectionable where the requirement overstated the agency's actual needs, the agency's needs can be met through award to an offeror which did not satisfy the requirement but acquired the license shortly after award, and there is no reasonable possibility of prejudice to other offerors.

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### DECISION

RSI Realty Services, Inc. (RSI) protests the award of a contract to CitiWest Properties, Inc. under request for proposals (RFP) No. H02R950642, issued by the Department of Housing and Urban Development (HUD), for real estate asset management (REAM) services. RSI argues that CitiWest should not have received award because it did not have a New Jersey real estate broker license as of the time of award, as required by the solicitation.

We deny the protest.

The RFP provided for the award of a firm, fixed-price, indefinite quantity contract for the performance of REAM services in Atlantic, Cape May, Cumberland, Ocean and Salem counties, New Jersey. The contractor will be responsible for preserving and protecting single family properties until the units are sold to the public or accepted by nonprofit organizations. The RFP provided that award would be made to the responsible offeror whose offer, conforming to the solicitation, was determined most advantageous to the government, cost and other factors considered.

The agency issued four amendments to the solicitation, with amendment No. 004 adding the following:

"LICENSE REQUIREMENTS. The Contractor must possess a valid New Jersey Real Estate License. Evidence of the valid New Jersey Real Estate Broker License must be submitted to HUD prior to contract award."

The agency received three proposals, including those of CitiWest and RSI, by the RFP's closing date. Discussions were held, and best and final offers were received and evaluated. CitiWest's proposal received a total score of 79 points, with an evaluated price of \$678.05 per unit. RSI's proposal received a total score of 70 points, with an evaluated price of \$730.45 per unit. The agency determined that CitiWest's proposal represented the best value to the government and made award to that firm.

RSI argues that the award was improper because CitiWest did not have a New Jersey Real Estate Brokers license at the time of award as required by amendment 004.

The contracting officer states that during the consideration of CitiWest's proposal, she was informed by CitiWest that, although that firm did not have the requisite real estate license, if CitiWest were awarded the contract, it would incorporate in New Jersey and promptly obtain all necessary licensing to perform the contract. The contracting officer adds that she contacted two other HUD offices for which CitiWest was performing REAM contracts, and was informed that within 5 days of award of those contracts CitiWest had established and fully staffed REAM offices, and that within 2 weeks of award CitiWest had obtained all necessary licenses. Based on the foregoing, and certain other information not relevant here, the agency found CitiWest responsible and awarded the contract to that firm on July 21. CitiWest subsequently obtained the requisite licenses with an effective date of August 15.

Our Office generally does not review affirmative determinations of responsibility because such determinations are based in large measure on subjective judgments. Bid Protest Regulations, 4 C.F.R. § 21.3(m)(5) (1995); Stocker & Yale, Inc., B-238251, May 16, 1990, 90-1 CPD ¶ 475. One exception to this rule is where a solicitation contains definitive responsibility criteria, that is, specific and objective standards established by an agency to measure an offeror's ability to perform the contract. Federal Acquisition Regulation (FAR) § 9.104-2; Tama Kensetsu Co., Ltd., and Nippon Hodo., B-233118, Feb. 8, 1989, 89-1 CPD ¶ 128. These special standards put firms on notice that the class of prospective contractors is limited to those who

meet the qualitative or quantitative criteria deemed necessary for adequate performance, e.g., unusual expertise, specialized facilities, or particular licenses. Tucson Mobilephone, Inc. B-258408.3, June 5, 1995, 95-1 CPD ¶ 267; Stocker & Yale, Inc., supra. Here, as the agency agrees, the RFP's requirement that the awardee possess a valid New Jersey Real Estate Broker License at the time of award is a definitive responsibility criterion.

As the record demonstrates, CitiWest simply did not have the license required as of the time of award. Although, as pointed out by the agency, in certain cases we have recognized that a definitive responsibility criterion need not be satisfied literally if there is equivalent or comparable compliance, see, e.g., Unison Transformer Servs., Inc., 68 Comp. Gen. 74 (1988), 88-2 CPD ¶ 471 (requirement that offeror have reclassified a transformer which performed properly for 1 year met where the offeror demonstrated through laboratory testing that it could reclassify a transformer which would perform properly for 1 year); Pikes Peak Community College, B-199102, Oct. 17, 1980, 80-2 CPD ¶ 293 (college's accreditation by a national association comparable to requirement that offeror be accredited by regional or state association), the assurances from CitiWest and the experiences of other HUD offices that CitiWest would be able to promptly obtain the license cannot be considered comparable to what the RFP stated was required--a valid New Jersey Real Estate Brokers License prior to award. See Stocker & Yale, supra. By finding CitiWest responsible and making award to that firm, the contracting officer effectively waived the RFP's definitive responsibility criterion that offerors possess the license prior to award. See Topley Realty Co., Inc., 65 Comp. Gen. 510 (1986), 86-1 CPD ¶ 398

We find the waiver unobjectionable under the circumstances here. It is apparent from the record that the requirement that the license be obtained prior to award exceeded the agency's actual needs, and that the award to CitiWest, which had demonstrated that it would in all likelihood be able to obtain the license shortly after award (and did in fact obtain one), met the agency's actual needs. Id.; Ktech Corp.; Physical Research, Inc., B-241808; B-241808.2, Mar. 1, 1991, 91-1 CPD ¶ 237, aff'd, Physical Research, Inc.--Recon., B-241808.4, June 10, 1991, 91-1 CPD ¶ 552. Further, the record evidences no possibility of prejudice attendant to the waiver of the pre-award licensing requirement. Three offers for these services were received, and there is no evidence, or reason to believe, that any firms were excluded from the competition due to the requirement. Additionally, there is no indication that the content or pricing of any of the offers submitted would have been different if the

requirement had permitted offerors to merely show the ability to obtain a license shortly after award. Because the award to CitiWest met the agency's actual needs without prejudice to the other offerors, there is no basis to object to the waiver. See Ktech Corp.; Physical Research, Inc., supra. The award to CitiWest therefore was proper.

The protest is denied.

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